

National Labor Relations Board

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AUTHORITY: Sec. 6 of the National Labor Relations Act, as amended (29 U.S.C. 151, 156), and sec. 552(a) of the Administrative Procedure Act (5 U.S.C. 552(a)). Section 101.14 also issued under sec. 2112(a)(1) of Pub. L. 100-236, 28 U.S.C. 2112(a)(1).

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Subpart A—General Statement

§ 101.1 General statement.

The following statements of the general course and method by which the

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Board's functions are channeled and determined are issued and published pursuant to 5 U.S.C. 552(a)(1)(B).

Subpart B—Unfair Labor Practice Cases Under Section 10 (a) to (i) of the Act and Telegraph Merger Act Cases

§ 101.2 Initiation of unfair labor practice cases.

The investigation of an alleged violation of the National Labor Relations Act is initiated by the filing of a charge, which must be in writing and signed, and must either be notarized or must contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of the persons' knowledge and belief. The charge is filed with the Regional Director for the Region in which the alleged violations have occurred or are occurring. A blank form for filing such charge is supplied by the Regional Office upon request. The charge contains the name and address of the person against whom the charge is made and a statement of the facts constituting the alleged unfair labor practices.

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§ 101.4 Investigation of charges.

When the charge is received in the Regional Office it is filed, docketed, and assigned a case number. The Regional Director may cause a copy of the charge to be served on the person against whom the charge is made, but timely service of a copy of the charge within the meaning of the proviso to section 10(b) of the Act is the exclusive responsibility of the charging party and not of the Regional Director. The Regional Director requests the person filing the charge to submit promptly evidence in its support. As part of the investigation hereinafter mentioned, the person against whom the charge is filed, hereinafter called the respondent, is asked to submit a statement of position in respect to the allegations. The case is assigned for investigation to a member of the field staff, who interviews representatives of the parties and other persons who have knowledge as to the charge, as is deemed nec-

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essary. In the investigation and in all other stages of the proceedings, charges alleging violations of section 8(b)(4) (A), (B), and (C), charges alleging violations of section 8(b)(4)(D) in which it is deemed appropriate to seek injunctive relief under section 10(1) of the Act, and charges alleging violations of section 8(b)(7) or 8(e) are given priority over all other cases in the office in which they are pending except cases of like character; and charges alleging violations of sections 8(a)(3) or 8(b)(2) are given priority over all other cases except cases of like character and cases under section 10(1) of the Act. The Regional Director may exercise discretion to dispense with any portion of the investigation described in this section as appears necessary in consideration of such factors as the amount of time necessary to complete a full investigation, the nature of the proceeding, and the public interest. After investigation, the case may be disposed of through informal methods such as withdrawal, dismissal, or settlement; or the case may necessitate formal methods of disposition. Some of the informal methods of handling unfair labor practice cases will be stated first.

§ 101.5 Withdrawal of charges.

If investigation reveals that there has been no violation of the National Labor Relations Act or the evidence is insufficient to substantiate the charge, the Regional Director recommends withdrawal of the charge by the person who filed. Withdrawal may also be requested on the initiative of the complainant. If the complainant accepts the recommendation of the Regional Director or requests withdrawal, the respondent is immediately notified of the withdrawal of the charge.

§ 101.6 Dismissal of charges and appeals to the General Counsel.

If the complainant refuses to withdraw the charge as recommended, the Regional Director dismisses the charge. The Regional Director thereupon informs the parties of this section, together with a simple statement of the grounds therefor, and the complainant's right of appeal to the General Counsel in Washington, DC, within 14 days. If the complainant appeals to

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the General Counsel, the entire file in the case is sent to Washington, DC, where the case is fully reviewed by the General Counsel with staff assistance. Oral presentation of the appeal issues may be permitted a party on timely written request, in which event the other parties are notified and afforded a like opportunity at another appropriate time. Following such review, the General Counsel may sustain the Regional Director's dismissal, stating the grounds of affirmance, or may direct the Regional Director to take further action.

§ 101.7 Settlements.

Before any complaint is issued or other formal action taken, the Regional Director affords an opportunity to all parties for the submission and consideration of facts, argument, offers of settlement, or proposals of adjustment, except where time, the nature of the proceeding, and the public interest do not permit. Normally prehearing conferences are held, the principal purpose of which is to discuss and explore such submissions and proposals of adjustment. The Regional Office provides Board-prepared forms for such settlement agreements, as well as printed notices for posting by the respondent. These agreements, which are subject to the approval of the Regional Director, provide for an appeal to the General Counsel, as described in § 101.6, by a complainant who will not join in a settlement or adjustment deemed adequate by the Regional Director. Proof of compliance is obtained by the Regional Director before the case is closed. If the respondent fails to perform the obligations under the informal agreement, the Regional Director may determine to institute formal proceedings.

§ 101.8 Complaints.

If the charge appears to have merit and efforts to dispose of it by informal adjustment are unsuccessful, the Regional Director institutes formal action by issuance of a complaint and notice of hearing. In certain types of cases, involving novel and complex issues, the Regional Director, at the discretion of the General Counsel, must submit the case for advice from the

General Counsel before issuing a complaint. The complaint, which is served on all parties, sets forth the facts upon which the Board bases its jurisdiction and the facts relating to the alleged violations of law by the respondent. The respondent must file an answer to the complaint within 14 days of its receipt, setting forth a statement of its defense.

§ 101.9 Settlement after issuance of complaint.

(a) Even though formal proceedings have begun, the parties again have full opportunity at every stage to dispose of the case by amicable adjustment and in compliance with the law. Thus, after the complaint has been issued and a hearing scheduled or commenced, the attorney in charge of the case and the Regional Director afford all parties every opportunity for the submission and consideration of facts, argument, offers of settlement, or proposals of adjustment, except where time, the nature of the proceeding, and the public interest do not permit.

(b)(1) After the issuance of a complaint, the Agency favors a formal settlement agreement, which is subject to the approval of the Board in Washington, DC. In such an agreement, the parties agree to waive their right to hearing and agree further that the Board may issue an order requiring the respondent to take action appropriate to the terms of the settlement. Ordinarily the formal settlement agreement also contains the respondent's consent to the Board's application for the entry of a judgment by the appropriate circuit court of appeals enforcing the Board's order.

(2) In some cases, however, the Regional Director, who has authority to withdraw the complaint before the hearing (§ 102.18), may conclude that an informal settlement agreement of the type described in § 101.7 is appropriate. Such agreement is not subject to approval by the Board and does not provide for a Board order. It provides for the withdrawal of the complaint.

(c)(1) If after issuance of a complaint but before opening of the hearing, the charging party will not join in a settlement tentatively agreed upon by the Regional Director, the respondent, and

any other parties whose consent may be required, the Regional Director serves a copy of the proposed settlement agreement on the charging party with a brief written statement of the reasons for proposing its approval. Within 7 days after service of these documents, the charging party may file with the Regional Director a written statement of any objections to the proposed settlement. Such objections will be considered by the Regional Director in determining whether to approve the proposed settlement. If the settlement is approved by the Regional Director notwithstanding the objections, the charging party is so informed and provided a brief written statement of the reasons for the approval.

(2) If the settlement agreement approved by the Regional Director is a formal one, providing for the entry of a Board order, the settlement agreement together with the charging party's objections and the Regional Director's written statements are submitted to Washington, DC, where they are reviewed by the General Counsel. If the General Counsel decides to approve the settlement agreement, the charging party is so informed and the agreement and accompanying documents are submitted to the Board, upon whose approval the settlement is contingent. Within 7 days after service of notice of submission of the settlement agreement to the Board, the charging party may file with the Board in Washington, DC, a further statement in support of objections to the settlement agreement.

(3) If the settlement agreement approved by the Regional Director is an informal one, providing for the withdrawal of the complaint, the charging party may appeal the Regional Director's action to the General Counsel, as provided in § 102.19 of the Board's Rules and Regulations.

(d)(1) If the settlement occurs after the opening of the hearing and before issuance of the administrative law judge's decision and there is an all-party informal settlement, the request for withdrawal of the complaint must be submitted to the administrative law judge for approval. If the all-party settlement is a formal one, final approval must come from the Board. If any

party will not join in the settlement agreed to by the other parties, the administrative law judge will give such party an opportunity to state on the record or in writing its reasons for opposing the settlement.

(2) If the administrative law judge decides to accept or reject the proposed settlement, any party aggrieved by such ruling may ask for leave to appeal to the Board as provided in § 102.26.

(e)(1) In the event the respondent fails to comply with the terms of a settlement stipulation, upon which a Board order and court judgment are based, the Board may petition the court to adjudge the respondent in contempt. If the respondent refuses to comply with the terms of a settlement stipulation providing solely for the entry of a Board order, the Board may petition the court for enforcement of its order pursuant to section 10 of the National Labor Relations Act.

(2) In the event the respondent fails to comply with the terms of an informal settlement agreement, the Regional Director may set the agreement aside and institute further proceedings.

§ 101.10 Hearings.

(a) Except in extraordinary situations the hearing is open to the public and usually conducted in the Region where the charge originated. A duly designated administrative law judge presides over the hearing. The Government's case is conducted by an attorney attached to the Board's Regional Office, who has the responsibility of presenting the evidence in support of the complaint. The rules of evidence applicable in the district courts of the United States under the Rules of Civil Procedure adopted by the Supreme Court are, so far as practicable, controlling. Counsel for the General Counsel, all parties to the proceeding, and the administrative law judge have the power to call, examine, and cross-examine witnesses and to introduce evidence into the record. They may also submit briefs, engage in oral argument, and submit proposed findings and conclusions to the administrative law judge. The attendance and testimony

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of witnesses and the production of evidence material to any matter under investigation may be compelled by subpoena.

(b) The functions of all administrative law judges and other Board agents or employees participating in decisions in conformity with section 8 of the Administrative Procedure Act (5 U.S.C. 557) are conducted in an impartial manner and any such administrative law judge, agent, or employee may at any time withdraw if he or she deems himself or herself disqualified because of bias or prejudice. The Board's attorney has the burden of proof of violations of section 8 of the National Labor Relations Act and section 222(f) of the Telegraph Merger Act. In connection with hearings subject to the provisions of section 7 of the Administrative Procedure Act (5 U.S.C. 556):

(1) No sanction is imposed or rule or order issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the preponderance of the reliable, probative, and substantial evidence.

(2) Every party has the right to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(3) Where any decision rests on official notice of a material fact not appearing in the evidence in the record, any party is on timely request afforded a reasonable opportunity to show the contrary.

(4) Subject to the approval of the administrative law judge, all parties to the proceeding voluntarily may enter into a stipulation dispensing with a verbatim written transcript of record of the oral testimony adduced at the hearing and providing for the waiver by the respective parties of their right to file with the Board exceptions to the findings of fact (but not to conclusions of law or recommended orders) in the administrative law judge's decision.

§ 101.11 Administrative law judge's decision.

(a) At the conclusion of the hearing the administrative law judge prepares

a decision stating findings of fact and conclusions, as well as the reasons for the determinations on all material issues, and making recommendations as to action which should be taken in the case. The administrative law judge may recommend dismissal or sustain the complaint, in whole or in part, and recommend that the respondent cease and desist from the unlawful acts found and take action to remedy their effects.

(b) The administrative law judge's decision is filed with the Board in Washington, DC, and copies are simultaneously served on each of the parties. At the same time the Board, through its Executive Secretary, issues and serves on each of the parties an order transferring the case to the Board. The parties may accept and comply with the administrative law judge's recommended order, which, in the absence of exceptions, shall become the order of the Board. Or, the parties or counsel for the Board may file exceptions to the administrative law judge's decision with the Board. Whenever any party files exceptions, any other party may file an answering brief limited to questions raised in the exceptions and/or may file cross-exceptions relating to any portion of the administrative law judge's decision. Cross-exceptions may be filed only by a party who has not previously filed exceptions. Whenever any party files cross-exceptions, any other party may file an answering brief to the cross-exceptions. The parties may request permission to appear and argue orally before the Board in Washington, DC. They may also submit proposed findings and conclusions to the Board.

§ 101.12 Board decision and order.

(a) If any party files exceptions to the administrative law judge's decision, the Board, with the assistance of the staff counsel to each Board Member who function in much the same manner as law clerks do for judges, reviews the entire record, including the administrative law judge's decision and recommendations, the exceptions thereto, the complete transcript of evidence, and the exhibits, briefs, and arguments. The Board does not consult with members of the administrative

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law judge's staff of the division of judges or with any agent of the General Counsel in its deliberations. It then issues its decision and order in which it may adopt, modify, or reject the findings and recommendations of the administrative law judge. The decision and order contains detailed findings of fact, conclusions of law, and basic reasons for decision on all material issues raised, and an order either dismissing the complaint in whole or in part or requiring the respondent to cease and desist from its unlawful practices and to take appropriate affirmative action.

(b) If no exceptions are filed, the administrative law judge's decision and recommended order automatically become the decision and order of the Board pursuant to section 10(c) of the Act. All objections and exceptions, whether or not previously made during or after the hearing, are deemed waived for all purposes.

§ 101.13 Compliance with Board decision and order.

(a) Shortly after the Board's decision and order is issued the Director of the Regional Office in which the charge was filed communicates with the respondent for the purpose of obtaining compliance. Conferences may be held to arrange the details necessary for compliance with the terms of the order.

(b) If the respondent effects full compliance with the terms of the order, the Regional Director submits a report to that effect to Washington, DC, after which the case may be closed. Despite compliance, however, the Board's order is a continuing one; therefore, the closing of a case on compliance is necessarily conditioned upon the continued observance of that order; and in some cases it is deemed desirable, notwithstanding compliance, to implement the order with an enforcing court judgment. Subsequent violations of the order may become the basis of further proceedings.

§ 101.14 Judicial review of Board decision and order.

If the respondent does not comply with the Board's order, or the Board deems it desirable to implement the order with a court judgment, the Board

may petition the appropriate Federal court for enforcement. Or, the respondent or any person aggrieved by a final order of the Board may petition the circuit court of appeals to review and set aside the Board's order. If a petition for review is filed, the respondent or aggrieved person must ensure that the Board receives, by service upon its Deputy Associate General Counsel of the Appellate Court Branch, a court-stamped copy of the petition with the date of filing. Upon such review or enforcement proceedings, the court reviews the record and the Board's findings and order and sustains them if they are in accordance with the requirements of law. The court may enforce, modify, or set aside in whole or in part the Board's findings and order, or it may remand the case to the Board for further proceedings as directed by the court. Following the court's judgment, either the Government or the private party may petition the Supreme Court for review upon writ of certiorari. Such applications for review to the Supreme Court are handled by the Board through the Solicitor General of the United States.

[53 FR 24440, June 29, 1988]

§ 101.15 Compliance with court judgment.

After a Board order has been enforced by a court judgment, the Board has the responsibility of obtaining compliance with that judgment. Investigation is made by the Regional Office of the respondent's efforts to comply. If it finds that the respondent has failed to live up to the terms of the court's judgment, the General Counsel may, on behalf of the Board, petition the court to hold the respondent in contempt of court. The court may order immediate remedial action and impose sanctions and penalties.

§ 101.16 Backpay proceedings.

(a) After a Board order directing the payment of backpay has been issued or after enforcement of such order by a court judgment, if informal efforts to dispose of the matter prove unsuccessful, the Regional Director then has discretion to issue a "backpay specification" in the name of the Board and a

notice of hearing before an administrative law judge, both of which are served on the parties involved. The specification sets forth computations showing gross and net backpay due and any other pertinent information. The respondent must file an answer within 21 days of the receipt of the specification, setting forth a particularized statement of its defense.

(b) In the alternative, the Regional Director, under the circumstances specified above, may issue and serve on the parties a notice of hearing only, without a specification. Such notice contains, in addition to the time and place of hearing before an administrative law judge, a brief statement of the matters in controversy.

(c) The procedure before the administrative law judge or the Board, whether initiated by the "backpay specification" or by notice of hearing without backpay specification, is substantially the same as that described in §§ 101.10 to 101.14, inclusive.

Subpart C—Representation Cases Under Section 9(c) of the Act and Petitions for Clarification of Bargaining Units and for Amendment of Certifications Under Section 9(b) of the Act

§ 101.17 Initiation of representation cases and petitions for clarification and amendment.

The investigation of the question as to whether a union represents a majority of an appropriate grouping of employees is initiated by the filing of a petition by any person or labor organization acting on behalf of a substantial number of employees or by an employer when one or more individuals or labor organizations present a claim to be recognized as the exclusive bargaining representative. If there is a certified or currently recognized representative, any employee, or group of employees, or any individual or labor organization acting in their behalf may also file decertification petitions to test the question of whether the certified or recognized agent is still the representative of the employees. If there is a certified or currently recog-

nized representative of a bargaining unit and there is no question concerning representation, a party may file a petition for clarification of the bargaining unit. If there is a unit covered by a certification and there is no question concerning representation, any party may file a petition for amendment to reflect changed circumstances, such as changes in the name or affiliation of the labor organization involved or in the name or location of the employer involved. The petition must be in writing and signed, and either must be notarized or must contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of his or her knowledge and belief. It is filed with the Regional Director for the Region in which the proposed or actual bargaining unit exists. Petition forms, which are supplied by the Regional Office upon request, provide, among other things, for a description of the contemplated or existing appropriate bargaining unit, the approximate number of employees involved, and the names of all labor organizations which claim to represent the employees. If a petition is filed by a labor organization seeking certification, or in the case of a petition to decertify a certified or recognized bargaining agent, the petitioner must supply, within 48 hours after filing but in no event later than the last day on which the petition might timely be filed, evidence of representation. Such evidence is usually in the form of cards, which must be dated, authorizing the labor organization to represent the employees or authorizing the petitioner to file a decertification petition. If a petition is filed by an employer, the petitioner must supply, within 48 hours after filing, proof of demand for recognition by the labor organization named in the petition and, in the event the labor organization named is the incumbent representative of the unit involved, a statement of the objective considerations demonstrating reasonable grounds for believing that the labor organization has lost its majority status.

§ 101.18 Investigation of petition.

(a) Upon receipt of the petition in the Regional Office, it is docketed and assigned to a member of the staff, usually a field examiner, for investigation. The field examiner conducts an investigation to ascertain (1) whether the employer's operations affect commerce within the meaning of the Act, (2) the appropriateness of the unit of employees for the purposes of collective bargaining and the existence of a bona fide question concerning representation within the meaning of the Act, (3) whether the election would effectuate the policies of the Act and reflect the free choice of employees in the appropriate unit, and (4) whether, if the petitioner is a labor organization seeking recognition, there is a sufficient probability, based on the evidence of representation of the petitioner, that the employees have selected it to represent them. The evidence of representation submitted by the petitioning labor organization or by the person seeking decertification is ordinarily checked to determine the number or proportion of employees who have designated the petitioner, it being the Board's administrative experience that in the absence of special factors the conduct of an election serves no purpose under the statute unless the petitioner has been designated by at least 30 percent of the employees. However, in the case of a petition by an employer, no proof of representation on the part of the labor organization claiming a majority is required and the Regional Director proceeds with the case if other factors require it unless the labor organization withdraws its claim to majority representation. The field examiner, or other member of the staff, attempts to ascertain from all interested parties whether or not the grouping or unit of employees described in the petition constitutes an appropriate bargaining unit. The petition may be amended at any time prior to hearing and may be amended during the hearing in the discretion of the hearing officer upon such terms as he or she deems just.

(b) The petitioner may on its own initiative request the withdrawal of the petition if the investigation discloses that no question of representation exists within the meaning of the statute,

because, among other possible reasons, the unit is not appropriate, or a written contract precludes further investigation at that time, or where the petitioner is a labor organization or a person seeking decertification and the showing of representation among the employees is insufficient to warrant an election under the 30-percent principle stated in paragraph (a) of this section.

(c) For the same or similar reasons the Regional Director may request the petitioner to withdraw its petition. If the petitioner, despite the Regional Director's recommendations, refuses to withdraw the petition, the Regional Director then dismisses the petition, stating the grounds for dismissal and informing the petitioner of its right of appeal to the Board in Washington, DC. The petition may also be dismissed in the discretion of the Regional Director if the petitioner fails to make available necessary facts which are in its possession. The petitioner may within 14 days appeal from the Regional Director's dismissal by filing such request with the Board in Washington, DC; after a full review of the file with the assistance of its staff, the Board may sustain the dismissal, stating the grounds of its affirmance, or may direct the Regional Director to take further action.

§ 101.19 Consent adjustments before formal hearing.

The Board has devised and makes available to the parties three types of informal consent procedures through which representation issues can be resolved without recourse to formal procedures. These informal arrangements are commonly referred to as consent-election agreement followed by Regional Director's determination, stipulated election agreement followed by Board certification, and full consent agreement, in which the parties agree that all pre- and postelection disputes will be resolved with finality by the Regional Director. Forms for use in these informal procedures are available in the Regional Offices.

(a)(1) The consent-election agreement followed by the Regional Director's determination of representatives is one method of informal adjustment of representation cases. The terms of the agreement providing for this form

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of adjustment are set forth in printed forms, which are available upon request at the Board's Regional Offices. Under these terms the parties agree with respect to the appropriate unit, the payroll period to be used as the basis of eligibility to vote in an election, and the place, date, and hours of balloting. A Board agent arranges the details incident to the mechanics and conduct of the election. For example, the Board agent usually arranges preelection conferences in which the parties check the list of voters and attempt to resolve any questions of eligibility. Also, prior to the date of election, the holding of such election shall be adequately publicized by the posting of official notices in the establishment whenever possible or in other places, or by the use of other means considered appropriate and effective. These notices reproduce a sample ballot and outline such election details as location of polls, time of voting, and eligibility rules.

(2) The actual polling is always conducted and supervised by Board agents. Appropriate representatives of each party may assist them and observe the election. As to the mechanics of the election, a ballot is given to each eligible voter by the Board's agents. The ballots are marked in the secrecy of a voting booth. The Board agents and authorized observers have the privilege of challenging for reasonable cause employees who apply for ballots.

(3) Customarily the Board agents, in the presence and with the assistance of the authorized observers, count and tabulate the ballots immediately after the closing of the polls. A complete tally of the ballots is made available to the parties upon the conclusion of the election.

(4) If challenged ballots are sufficient in number to affect the results of the election, the Regional Director conducts an investigation and rules on the challenges. Similarly, if objections to the conduct of the election are filed within 7 days after the tally of ballots has been prepared, the Regional Director likewise conducts an investigation and rules on the objections. If, after investigation, the objections are found to have merit, the Regional Director may

void the election results and conduct a new election.

(5) This form of agreement provides that the rulings of the Regional Director on all questions relating to the election (for example, eligibility to vote and the validity of challenges and objections) are final and binding. Also, the agreement provides for the conduct of a runoff election, in accordance with the provisions of the Board's Rules and Regulations, if two or more labor organizations appear on the ballot and no one choice receives the majority of the valid votes cast.

(6) The Regional Director issues to the parties a certification of the results of the election, including certifications of representative where appropriate, with the same force and effect as if issued by the Board.

(b) The stipulated election agreement followed by a Board determination provides that disputed matters following the agreed-upon election, if determinative of the results, can be the basis of a formal decision by the Board instead of an informal determination by the Regional Director, except that if the Regional Director decides that a hearing on objections or challenged ballots is necessary the Director may direct such a hearing before a hearing officer, or, if the case is consolidated with an unfair labor practice proceeding, before an administrative law judge. If a hearing is directed, such action on the part of the Regional Director constitutes a transfer of the case to the Board. Thus, except for directing a hearing, it is provided that the Board, rather than the Regional Director, makes the final determination of questions raised concerning eligibility, challenged votes, and objections to the conduct of the election. If challenged ballots are sufficient in number to affect the results of the election, the Regional Director conducts an investigation and issues a report on the challenges instead of ruling thereon, unless the Director elects to hold a hearing. Similarly, if objections to the conduct of the election are filed within 7 days after the tally of ballots has been prepared, the Regional Director likewise conducts an investigation and issues a report instead of ruling on the validity of the objections, unless the Director elects to hold a

hearing. The Regional Director's report is served on the parties, who may file exceptions thereto within 14 days with the Board in Washington, DC. The Board then reviews the entire record made and may, if a substantial issue is raised, direct a hearing on the challenged ballots or the objections to the conduct of the election. Or, the Board may, if no substantial issues are raised, affirm the Regional Director's report and take appropriate action in termination of the proceedings. If a hearing is ordered by the Regional Director or the Board on the challenged ballots or objections, all parties are heard and a report containing findings of fact and recommendations as to the disposition of the challenges or objections, or both, and resolving issues of credibility is issued by the hearing officer and served on the parties, who may file exceptions thereto within 14 days with the Board in Washington, DC. The record made on the hearing is reviewed by the Board with the assistance of its staff counsel and a final determination made thereon. If the objections are found to have merit, the election results may be voided and a new election conducted under the supervision of the Regional Director. If the union has been selected as the representative, the Board or the Regional Director, as the case may be, issues its certification and the proceeding is terminated. If upon a decertification or employer petition the union loses the election, the Board or the Regional Director, as the case may be, certifies that the union is not the chosen representative.

(c) The full consent-election agreement followed by the Regional Director's determination of representatives is another method of informal adjustment of representation cases.

(1) Under these terms the parties agree that if they are unable to informally resolve disputes arising with respect to the appropriate unit and other issues pertaining to the resolution of the question concerning representation; the payroll period to be used as the basis of eligibility to vote in an election, the place, date, and hours of balloting, or other details of the election, those issues will be presented to, and decided with finality by the Regional Director after a hearing con-

ducted in a manner consistent with the procedures set forth in § 101.20.

(2) Upon the close of the hearing, the entire record in the case is forwarded to the Regional Director. The hearing officer also transmits an analysis of the issues and the evidence, but makes no recommendations as to resolution of the issues. All parties may file briefs with the Regional Director within 7 days after the close of the hearing. The parties may also request to be heard orally. After review of the entire case, the Regional Director issues a final decision, either dismissing the petition or directing that an election be held. In the latter event, the election is conducted under the supervision of the Regional Director in the manner already described in this section.

(3) All matters arising after the election, including determinative challenged ballots and objections to the conduct of the election shall be processed in a manner consistent with paragraphs (a)(4), (5), and (6) of this section.

[70 FR 3477, Jan. 25, 2005, as amended at 70 FR 3477, Jan. 25, 2005]

§ 101.20 Formal hearing.

(a) If no informal adjustment of the question concerning representation has been effected and it appears to the Regional Director that formal action is necessary, the Regional Director will institute formal proceedings by issuance of a notice of hearing on the issues, which is followed by a decision and direction of election or dismissal of the case. In certain types of cases, involving novel or complex issues, the Regional Director may submit the case for advice to the Board before issuing notice of hearing.

(b) The notice of hearing, together with a copy of the petition, is served on the unions and employer filing or named in the petition and on other known persons or labor organizations claiming to have been designated by employees involved in the proceeding.

(c) The hearing, usually open to the public, is held before a hearing officer who normally is an attorney or field examiner attached to the Regional Office but may be another qualified Agency official. The hearing, which is non-adversary in character, is part of the

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investigation in which the primary interest of the Board's agents is to ensure that the record contains as full a statement of the pertinent facts as may be necessary for determination of the case. The parties are afforded full opportunity to present their respective positions and to produce the significant facts in support of their contentions. In most cases a substantial number of the relevant facts are undisputed and stipulated. The parties are permitted to argue orally on the record before the hearing officer.

§ 101.21 Procedure after hearing.

(a) Pursuant to section 3(b) of the Act, the Board has delegated to its Regional Directors its powers under section 9 of the Act to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 9 and certify the results thereof. These powers include the issuance of such decisions, orders, rulings, directions, and certifications as are necessary to process any representation or deauthorization petition. Thus, by way of illustration and not of limitation, the Regional Director may dispose of petitions by administrative dismissal or by decision after formal hearing; pass upon rulings made at hearings and requests for extensions of time for filing of briefs; rule on objections to elections and challenged ballots in connection with elections Directed by the Regional Director or the Board, after administrative investigation or formal hearing; rule on motions to amend or rescind any certification issued after the effective date of the delegation; and entertain motions for oral argument. The Regional Director may at any time transfer the case to the Board for decision, but until such action is taken, it will be presumed that the Regional Director will decide the case. In the event the Regional Director decides the issues in a case, the decision is final subject to the review procedure set forth in the Board's Rules and Regulations.

(b) Upon the close of the hearing, the entire record in the case is forwarded

to the Regional Director or, upon issuance by the Regional Director of an order transferring the case, to the Board in Washington, DC. The hearing officer also transmits an analysis of the issues and the evidence, but makes no recommendations in regard to resolution of the issues. All parties may file briefs with the Regional Director or, if the case is transferred to the Board at the close of the hearing, with the Board, within 7 days after the close of the hearing. If the case is transferred to the Board after the close of the hearing, briefs may be filed with the Board within the time prescribed by the Regional Director. The parties may also request to be heard orally. Because of the nature of the proceedings, however, permission to argue orally is rarely granted. After review of the entire case, the Regional Director or the Board issues a decision, either dismissing the petition or directing that an election be held. In the latter event, the election is conducted under the supervision of the Regional Director in the manner already described in § 101.19.

(c) With respect to objections to the conduct of the election and challenged ballots, the Regional Director has discretion (1) to issue a report on such objections and/or challenged ballots and transmit the issues to the Board for resolution, as in cases involving stipulated elections to be followed by Board certifications, or (2) to decide the issues on the basis of the administrative investigation or after a hearing, with the right to transfer the case to the Board for decision at any time prior to disposition of the issues on the merits. In the event the Regional Director adopts the first procedure, the parties have the same rights, and the same procedure is followed, as has already been described in connection with the postelection procedures in cases involving stipulated elections to be followed by Board certifications. In the event the Regional Director adopts the second procedure, the parties have the same rights, and the same procedure is followed, as has already been described in connection with hearings before elections.

(d) The parties have the right to request review of any final decision of

the Regional Director, within the times set forth in the Board's Rules and Regulations, on one or more of the grounds specified therein. Any such request for review must be a self-contained document permitting the Board to rule on the basis of its contents without the necessity of recourse to the record, and must meet the other requirements of the Board's Rules and Regulations as to its contents. The Regional Director's action is not stayed by the filing of such a request or the granting of review, unless otherwise ordered by the Board. Thus, the Regional Director may proceed immediately to make any necessary arrangements for an election, including the issuance of a notice of election. However, unless a waiver is filed, the Director will normally not schedule an election until a date between the 25th and 30th days after the date of the decision, to permit the Board to rule on any request for review which may be filed. As to administrative dismissals prior to the close of hearing, see § 101.18(c).

(e) If the election involves two or more labor organizations and if the election results are inconclusive because no choice on the ballot received the majority of valid votes cast, a run-off election is held as provided in the Board's Rules and Regulations.

Subpart D—Unfair Labor Practice and Representation Cases Under Sections 8(b)(7) and 9(c) of the Act

§ 101.22 Initiation and investigation of a case under section 8(b)(7).

(a) The investigation of an alleged violation of section 8(b)(7) of the Act is initiated by the filing of a charge. The manner of filing such charge and the contents thereof are the same as described in § 101.2. In some cases, at the time of the investigation of the charge, there may be pending a representation petition involving the employees of the employer named in the charge. In those cases, the results of the investigation of the charge will determine the cause of the petition.

(b) The investigation of the charge is conducted in accordance with the provisions of § 101.4, insofar as they are applicable. If the investigation reveals

that there is merit in the charge, a complaint is issued as described in § 101.8, and an application is made for an injunction under section 10(1) of the Act, as described in § 101.37. If the investigation reveals that there is no merit in the charge, the Regional Director, absent a withdrawal of the charge, dismisses it, subject to appeal to the General Counsel. However, if the investigation reveals that issuance of a complaint may be warranted but for the pendency of a representation petition involving the employees of the employer named in the charge, action on the charge is suspended pending the investigation of the petition as provided in § 101.23.

§ 101.23 Initiation and investigation of a petition in connection with a case under section 8(b)(7).

(a) A representation petition¹ involving the employees of the employer named in the charge is handled under an expedited procedure when the investigation of the charge has revealed that:

(1) The employer's operations affect commerce within the meaning of the Act;

(2) Picketing of the employer is being conducted for an object proscribed by section 8(b)(7) of the Act;

(3) Subparagraph (C) of that section of the Act is applicable to the picketing; and

(4) The petition has been filed within a reasonable period of time not to exceed 30 days from the commencement of the picketing.

In these circumstances, the member of the Regional Director's staff to whom the matter has been assigned investigates the petition to ascertain further: the unit appropriate for collective bargaining; and whether an election in that unit would effectuate the policies of the Act.

(b) If, based on such investigation, the Regional Director determines that an election is warranted, the Director

¹The manner of filing of such petition and the contents thereof are the same as described in § 101.17, except that the petitioner is not required to allege that a claim was made on the employer for recognition or that the union represents a substantial number of employees.

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may, without a prior hearing, direct that an election be held in an appropriate unit of employees. Any party aggrieved may file a request with the Board for special permission to appeal that action to the Board, but such review, if granted, will not, unless otherwise ordered by the Board, stay the proceeding. If it is determined that an election is not warranted, the Director dismisses the petition or makes other disposition of the matter. Should the Regional Director conclude that an election is warranted, the Director fixes the basis of eligibility of voters and the place, date, and hours of balloting. The mechanics of arranging the balloting, the other procedures for the conduct of the election, and the post-election proceedings are the same, insofar as appropriate, as those described in § 101.19, except that the Regional Director's rulings on any objections to the conduct of the election or challenged ballots are final and binding, unless the Board, on an application by one of the parties, grants such party special permission to appeal from the Regional Director's rulings. The party requesting such review by the Board must do so promptly, in writing, and state briefly the grounds relied on. Such party must also immediately serve a copy on the other parties, including the Regional Director. Neither the request for review by the Board nor the Board's grant of such review operates as a stay of any action taken by the Regional Director, unless specifically so ordered by the Board. If the Board grants permission to appeal, and it appears to the Board that substantial and material factual issues have been presented with respect to the objections to the conduct of the election or challenged ballots, it may order that a hearing be held on such issues or take other appropriate action.

(c) If the Regional Director believes, after preliminary investigation of the petition, that there are substantial issues which require determination before an election may be held, the Director may order a hearing on the issues. This hearing is followed by Regional Director or Board decision and direction of election, or other disposition. The procedures to be used in connection with such hearing and posthearing

proceedings are the same, insofar as they are applicable, as those described in §§ 101.20 and 101.21, except that the parties may not file briefs with the Regional Director or the Board unless special permission therefor is granted, but may state their respective legal positions fully on the record at the hearing, and except that any request for review must be filed promptly after issuance of the Regional Director's decision.

(d) Should the parties so desire, they may, with the approval of the Regional Director, resolve the issues as to the unit, the conduct of the balloting, and related matters pursuant to informal consent procedures, as described in § 101.19(a).

(e) If a petition has been filed which does not meet the requirements for processing under the expedited procedures, the Regional Director may process it under the procedures set forth in subpart C.

§ 101.24 Final disposition of a charge which has been held pending investigation of the petition.

(a) Upon the determination that the issuance of a direction of election is warranted on the petition, the Regional Director, absent withdrawal of the charge, dismisses it subject to an appeal to the General Counsel in Washington, DC.

(b) If, however, the petition is dismissed or withdrawn, the investigation of the charge is resumed, and the appropriate steps described in § 101.22 are taken with respect to it.

§ 101.25 Appeal from the dismissal of a petition, or from the refusal to process it under the expedited procedure.

If it is determined after investigation of the representation petition that further proceedings based thereon are not warranted, the Regional Director, absent withdrawal of the petition, dismisses it, stating the grounds therefor. If it is determined that the petition does not meet the requirements for processing under the expedited procedure, the Regional Director advises the petitioner of the determination to process the petition under the procedures described in subpart C. In either event, the Regional Director informs

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all the parties of such action, and such action is final, although the Board may grant an aggrieved party permission to appeal from the Regional Director's action. Such party must request such review promptly, in writing, and state briefly the grounds relied on. Such party must also immediately serve a copy on the other parties, including the Regional Director. Neither the request for review by the Board, nor the Board's grant of such review, operates as a stay of the action taken by the Regional Director, unless specifically so ordered by the Board.

Subpart E—Referendum Cases Under Section 9(e) (1) and (2) of the Act

§ 101.26 Initiation of rescission of authority cases.

The investigation of the question as to whether the authority of a labor organization to make an agreement requiring membership in a labor organization as a condition of employment is to be rescinded is initiated by the filing of a petition by an employee or group of employees on behalf of 30 percent or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization requiring membership in such labor organization. The petition must be in writing and signed, and either must be notarized or must contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of his knowledge and belief. It is filed with the Regional Director for the Region in which the alleged appropriate bargaining unit exists or, if the bargaining unit exists in two or more Regions, with the Regional Director for any of such Regions. The blank form, which is supplied by the Regional Office upon request, provides, among other things, for a description of the bargaining unit covered by the agreement, the approximate number of employees involved, and the names of any other labor organizations which claim to represent the employees. The petitioner must supply with the petition, or within 48 hours after filing, evidence of authorization from the employees.

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§ 101.27 Investigation of petition; withdrawals and dismissals.

(a) Upon receipt of the petition in the Regional Office, it is filed, docketed, and assigned to a member of the staff, usually a field examiner, for investigation. The field examiner conducts an investigation to ascertain:

(1) Whether the employer's operations affect commerce within the meaning of the Act,

(2) Whether there is in effect an agreement requiring as a condition of employment membership in a labor organization,

(3) Whether the petitioner has been authorized by at least 30 percent of the employees to file such a petition, and

(4) Whether an election would effectuate the policies of the Act by providing for a free expression of choice by the employees.

The evidence of designation submitted by the petitioner, usually in the form of cards signed by individual employees authorizing the filing of such a petition, is checked to determine the proportion of employees who desire rescission.

(b) The petitioner may on its own initiative request the withdrawal of the petition if the investigation discloses that an election is inappropriate, because, among other possible reasons, the petitioner's card-showing is insufficient to meet the 30-percent statutory requirement referred to in subsection (a) of this section.

(c) For the same or similar reasons the Regional Director may request the petitioner to withdraw its petition. If the petitioner, despite the Regional Director's recommendation, refuses to withdraw the petition, the Regional Director then dismisses the petition, stating the grounds for his dismissal and informing the petitioner of the right of appeal to the Board in Washington, DC. The petitioner may within 14 days appeal from the Regional Director's dismissal by filing such request with the Board in Washington, DC. The request shall contain a complete statement setting forth the facts and reasons upon which the request is made. After a full review of the file with the assistance of its staff, the Board may sustain the dismissal, stating the

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grounds for its affirmance, or may direct the Regional Director to take further action.

§ 101.28 Consent agreements providing for election.

(a) The Board makes available to the parties three types of informal consent procedures through which authorization issues can be resolved without resort to formal procedures. These informal agreements are commonly referred to as consent-election agreement followed by Regional Director's determination, stipulated election agreement followed by Board certification, and full consent-election agreement providing for the Regional Director's determination of both pre- and post-election matters. Forms for use in these informal procedures are available in the Regional Offices.

(b) The procedures to be used in connection with a consent-election agreement providing for the Regional Director's determination, a stipulated election agreement providing for Board certification, and the full consent-election agreement providing for the Regional Director's determination of both pre- and postelection matters are the same as those already described in subpart C of this part in connection with similar agreements in representation cases under section 9(c) of the Act, except that no provision is made for runoff elections.

[70 FR 3478, Jan. 25, 2005]

§ 101.29 Procedure respecting election conducted without hearing.

If the Regional Director determines that the case is an appropriate one for election without formal hearing, an election is conducted as quickly as possible among the employees and upon the conclusion of the election the Regional Director makes available to the parties a tally of ballots. The parties, however, have an opportunity to make appropriate challenges and objections to the conduct of the election and they have the same rights, and the same procedure is followed, with respect to objections to the conduct of the election and challenged ballots, as has already been described in subpart C of the Statements of Procedure in connection with the postelection procedures

in representation cases under section 9(c) of the Act, except that no provision is made for a runoff election. If no such objections are filed within 7 days and if the challenged ballots are insufficient in number to affect the results of the election, the Regional Director issues to the parties a certification of the results of the election, with the same force and effect as if issued by the Board.

§ 101.30 Formal hearing and procedure respecting election conducted after hearing.

(a) The procedures are the same as those described in subpart C of the Statements of Procedure respecting representation cases arising under section 9(c) of the Act. If the preliminary investigation indicates that there are substantial issues which require determination before an appropriate election may be held, the Regional Director will institute formal proceedings by issuance of a notice of hearing on the issues which, after hearing, is followed by Regional Director or Board decision and direction of election or dismissal. The notice of hearing together with a copy of the petition is served on the petitioner, the employer, and any other known persons or labor organizations claiming to have been designated by employees involved in the proceeding.

(b) The hearing, usually open to the public, is held before a hearing officer who normally is an attorney or field examiner attached to the Regional Office but may be another qualified Agency official. The hearing, which is non-adversary in character, is part of the investigation in which the primary interest of the Board's agents is to insure that the record contains as full a statement of the pertinent facts as may be necessary for determination of the case. The parties are afforded full opportunity to present their respective positions and to produce the significant facts in support of their contentions. In most cases a substantial number of the relevant facts are undisputed and stipulated. The parties are permitted to argue orally on the record before the hearing officer.

(c) Upon the close of the hearing, the entire record in the case is then forwarded to the Regional Director or the

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Board, together with an informal analysis by the hearing officer of the issues and the evidence but without recommendations. All parties may file briefs with the Regional Director or the Board within 7 days after the close of the hearing. If the case is transferred to the Board after the close of the hearing, briefs may be filed with the Board within the time prescribed by the Regional Director. The parties may also request to be heard orally. Because of the nature of the proceeding, however, permission to argue orally is rarely granted. After review of the entire case, the Board issues a decision either dismissing the petition or directing that an election be held. In the latter event, the election is conducted under the supervision of the Regional Director in the manner already described in § 101.19.

(d) The parties have the same rights, and the same procedure is followed, with respect to objections to the conduct of the election and challenged ballots as has already been described in connection with the postelection procedures in representation cases under section 9(c) of the Act.

Subpart F—Jurisdictional Dispute Cases Under Section 10(k) of the Act

§ 101.31 Initiation of proceedings to hear and determine jurisdictional disputes under section 10(k).

The investigation of a jurisdictional dispute under section 10(k) is initiated by the filing of a charge, as described in § 101.2, by any person alleging a violation of paragraph (4)(D) of section 8(b). As soon as possible after a charge has been filed, the Regional Director serves on the parties a copy of the charge together with a notice of the filing of such charge.

§ 101.32 Investigation of charges; withdrawal of charges; dismissal of charges and appeals to Board.

These matters are handled as described in §§ 101.4 to 101.7, inclusive. Cases involving violation of paragraph (4)(D) of section 8(b) in which it is deemed appropriate to seek injunctive relief of a district court pursuant to section 10(l) of the Act are given pri-

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ority over all other cases in the office except other cases under section 10(l) of the Act and cases of like character.

§ 101.33 Initiation of formal action; settlement.

If, after investigation, it appears that the Board should determine the dispute under section 10(k) of the Act, the Regional Director issues a notice of hearing which includes a simple statement of issues involved in the jurisdictional dispute and which is served on all parties to the dispute out of which the unfair labor practice is alleged to have arisen. The hearing is scheduled for not less than 10 days after service of the notice of the filing of the charge, except that in cases involving the national defense, agreement will be sought for scheduling of hearing on less notice. If the parties present to the Regional Director satisfactory evidence that they have adjusted the dispute, the Regional Director withdraws the notice of hearing and either permits the withdrawal of the charge or dismisses the charge. If the parties submit to the Regional Director satisfactory evidence that they have agreed upon methods for the voluntary adjustment of the dispute, the Regional Director shall defer action upon the charge and shall withdraw the notice of hearing if issued. The parties may agree on an arbitrator, a proceeding under section 9(c) of the Act, or any other satisfactory method to resolve the dispute. If the agreed-upon method for voluntary adjustment results in a determination that employees represented by a charged union are entitled to perform the work in dispute, the Regional Director dismisses the charge against that union irrespective of whether the employer complies with that determination.

§ 101.34 Hearing.

If the parties have not adjusted the dispute or agreed upon methods of voluntary adjustment, a hearing, usually open to the public, is held before a hearing officer. The hearing is non-adversary in character, and the primary interest of the hearing officer is to insure that the record contains as full a statement of the pertinent facts

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as may be necessary for a determination of the issues by the Board. All parties are afforded full opportunity to present their respective positions and to produce evidence in support of their contentions. The parties are permitted to argue orally on the record before the hearing officer. At the close of the hearing, the case is transmitted to the Board for decision. The hearing officer prepares an analysis of the issues and the evidence, but makes no recommendations in regard to resolution of the dispute.

§ 101.35 Procedure before the Board.

The parties have 7 days after the close of the hearing, subject to any extension that may have been granted, to file briefs with the Board and to request oral argument which the Board may or may not grant. However, in cases involving the national defense and so designated in the notice of hearing, the parties may not file briefs but after the close of the evidence may argue orally upon the record their respective contentions and positions, except that for good cause shown in an application expeditiously made to the Board in Washington, DC, after the close of the hearing, the Board may grant leave to file briefs in such time as it shall specify. The Board then considers the evidence taken at the hearing and the hearing officer's analysis together with any briefs that may be filed and the oral argument, if any, and issues its determination or makes other disposition of the matter.

§ 101.36 Compliance with determination; further proceedings.

After the issuance of determination by the Board, the Regional Director in the Region in which the proceeding arose communicates with the parties for the purpose of ascertaining their intentions in regard to compliance. Conferences may be held for the purpose of working out details. If satisfied that the parties are complying with the determination, the Regional Director dismisses the charge. If not satisfied that the parties are complying, the Regional Director issues a complaint and notice of hearing, charging violation of section 8(b)(4)(D) of the Act, and the proceeding follows the procedure out-

lined in §§101.8 to 101.15, inclusive. However, if the Board determines that employees represented by a charged union are entitled to perform the work in dispute, the Regional Director dismisses the charge against that union irrespective of whether the employer complies with the determination.

Subpart G—Procedure Under Section 10 (j) and (l) of the Act

§ 101.37 Application for temporary relief or restraining orders.

Whenever it is deemed advisable to seek temporary injunctive relief under section 10(j) or whenever it is determined that a complaint should issue alleging violation of section 8(b)(4) (A), (B), or (C), or section 8(e), or section 8(b)(7), or whenever it is appropriate to seek temporary injunctive relief for a violation of section 8(b)(4)(D), the officer or regional attorney to whom the matter has been referred will make application for appropriate temporary relief or restraining order in the district court of the United States within which the unfair labor practice is alleged to have occurred or within which the party sought to be enjoined resides or transacts business, except that such officer or regional attorney will not apply for injunctive relief under section 10(l) with respect to an alleged violation of section 8(b)(7) if a charge under section 8(a)(2) has been filed and, after preliminary investigation, there is reasonable cause to believe that such charge is true and a complaint should issue.

§ 101.38 Change of circumstances.

Whenever a temporary injunction has been obtained pursuant to section 10(j) and thereafter the administrative law judge hearing the complaint, upon which the determination to seek such injunction was predicated, recommends dismissal of such complaint, in whole or in part, the officer or regional attorney handling the case for the Board suggests to the district court which issued the temporary injunction the possible change in circumstances arising out of the findings and recommendations of the administrative law judge.

Subpart H—Advisory Opinions and Declaratory Orders Regarding Board Jurisdiction

§ 101.39 Initiation of advisory opinion case.

(a) The question of whether the Board will assert jurisdiction over a labor dispute which is the subject of a proceeding in an agency or court of a State or territory is initiated by the filing of a petition with the Board. This petition may be filed only if:

(1) A proceeding is currently pending before such agency or court;

(2) The petitioner is the agency or court itself; and

(3) The relevant facts are undisputed or the agency or court has already made the relevant factual findings.

(b) The petition must be in writing and signed. It is filed with the Executive Secretary of the Board in Washington, DC. No particular form is required, but the petition must be properly captioned and must contain the allegations required by section 102.99 of the Board's Rules and Regulations. None of the information sought may relate to the merits of the dispute. The petition may be withdrawn at any time before the Board issues its advisory opinion determining whether it would or would not assert jurisdiction on the basis of the facts before it.

[61 FR 65182, Dec. 11, 1996; 62 FR 52381, Oct. 7, 1997]

§ 101.40 Proceedings following the filing of the petition.

(a) A copy of the petition is served on all other parties and the appropriate Regional Director by the petitioner.

(b) Interested persons may request intervention by a written motion to the Board. Such intervention may be granted at the discretion of the Board.

(c) Parties other than the petitioner may reply to the petition in writing, admitting or denying any or all of the matters asserted therein.

(d) No briefs shall be filed except upon special permission of the Board.

(e) After review of the entire record, the Board issues an advisory opinion as to whether the facts presented would or would not cause it to assert jurisdiction over the case if the case had been

originally filed before it. The Board will limit its advisory opinion to the jurisdictional issue confronting it, and will not presume to render an opinion on the merits of the case or on the question of whether the subject matter of the dispute is governed by the Labor Management Relations Act.

§ 101.41 Informal procedures for obtaining opinions on jurisdictional questions.

Although a formal petition is necessary to obtain an advisory opinion from the Board, other avenues are available to persons seeking informal and, in most cases, speedy opinions on jurisdictional issues. In discussion of jurisdictional questions informally with Regional Office personnel, information and advice concerning the Board's jurisdictional standards may be obtained. Such practices are not intended to be discouraged by the rules providing for formal advisory opinions by the Board, although the opinions expressed by such personnel are not to be regarded as binding upon the Board or the General Counsel.

§ 101.42 Procedures for obtaining declaratory orders of the Board.

(a) When both an unfair labor practice charge and a representation petition are pending concurrently in a Regional Office, appeals from a Regional Director's dismissals thereof do not follow the same course. Appeal from the dismissal of a charge must be made to the General Counsel, while appeal from dismissal of a representation petition may be made to the Board. To obtain uniformity in disposing of such cases on jurisdictional grounds at the same stage of each proceeding, the General Counsel may file a petition for a declaratory order of the Board. Such order is intended only to remove uncertainty with respect to the question of whether the Board would assert jurisdiction over the labor dispute.

(b) A petition to obtain a declaratory Board order may be filed only by the General Counsel. It must be in writing

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and signed. It is filed with the Executive Secretary of the Board in Washington, DC. No particular form is required, but the petition must be properly captioned and must contain the allegations required by §102.106 of the Board's Rules and Regulations. None of the information sought relates to the merits of the dispute. The petition may be withdrawn any time before the Board issues its declaratory order deciding whether it would or would not assert jurisdiction over the cases.

§ 101.43 Proceedings following the filing of the petition.

(a) A copy of the petition is served on all other parties.

(b) Interested persons may request intervention by a written motion to the Board. Such intervention may be granted at the discretion of the Board.

(c) All other parties may reply to the petition in writing.

(d) Briefs may be filed.

(e) After review of the record, the Board issues a declaratory order as to whether it will assert jurisdiction over the cases, but it will not render a decision on the merits at this stage of the cases.

(f) The declaratory Board order will be binding on the parties in both cases.

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